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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact: \_\_\_\_\_, ID No. \_\_\_\_\_

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Refer Reply To:  
CC:FIP:B03  
PLR-149311-09  
Date:  
October 26, 2010

### Legend

Taxpayer =

Dear \_\_\_\_\_ :

This responds to a letter and subsequent correspondence on behalf of Taxpayer requesting a ruling regarding the treatment of Taxpayer's investments in certain partnerships (the "Property Partnerships") for purposes of the gross income tests in sections 856(c)(2) and 856(c)(3) of the Internal Revenue Code.

## Facts

Taxpayer is a domestic corporation that has elected to be treated as a real estate investment trust (REIT) under part II of subchapter M of the Code. Taxpayer owns a portfolio of commercial properties on its own behalf as well as through joint ventures with unrelated third parties, each of which are formed as either limited partnerships or limited liability companies for state law purposes and taxable as partnerships for federal income tax purposes (each, a Property Partnership). Taxpayer intends to form and invest, directly or through one or more wholly-owned subsidiary entities (Subsidiary Entities), in one or more Property Partnerships that will acquire and hold commercial real estate properties. Taxpayer will contribute capital to, and will be the general partner or managing member of, each Property Partnership.

In general, each of the partners of the Property Partnerships will share in the income and distributions of such partnership proportionately,

### **Law and Analysis**

To qualify as a REIT for any taxable year under part II of subchapter M, an entity must derive at least 95% of its gross income from sources listed in section 856(c)(2) and at least 75% of its gross income from sources listed in section 856(c)(3).

Section 1.856-3(g) of the Income Tax Regulations provides that in the case of a real estate investment trust which is a partner in a partnership, as defined in section 7701(a)(2) and the regulations thereunder, the trust will be deemed to own its proportionate share of each of the assets of the partnership and will be deemed to be entitled to the income of the partnership attributable to such share. For purposes of section 856, the interest of a partner in the partnership's assets shall be determined in accordance with his capital interest in the partnership. The character of the various assets in the hands of the partnership and items of gross income of the partnership shall retain the same character in the hands of the partners for all purposes of section 856. Thus, for example, if the trust owns a 30-percent capital interest in a partnership which owns a piece of rental property the trust will be treated as owning 30 percent of such property and as being entitled to 30 percent of the rent derived from the property by the partnership. Similarly, if the partnership holds any property primarily for sale to customers in the ordinary course of its trade or business, the trust will be treated as holding its proportionate share of such property primarily for such purpose. Also, for example, where a partnership sells real property or a trust sells its interest in a partnership which owns real property, any gross income realized from such sale, to the extent that it is attributable to the real property, shall be deemed gross income from the sale or disposition of real property held for either the period that the partnership has held the real property or the period that the trust was a member of the partnership, whichever is the shorter.

### **HOLDING**

Consistent with section 1.856-3(g), we conclude that Taxpayer must include in its gross income for purposes of sections 856(c)(2) and 856(c)(3) the proportionate amount of gross income of each Property Partnership which is determined in accordance with Taxpayer's capital interest in each Property Partnership, and that the character of such income in the hands of each Property Partnership will retain the same character in the hands of Taxpayer for all purposes of section 856.

Except as specifically ruled upon above, no opinion is expressed concerning any federal income tax consequences relating to the facts herein under any other provisions of the Code, including any issues regarding the validity of the allocations of the Property Partnership income to Taxpayer for purposes of section 704(b) of the Code or under any other partnership provision, or the determination of REIT taxable income under section 857 of the Code, or whether Taxpayer otherwise qualifies as a REIT under part II of subchapter M.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

David B. Silber  
David B. Silber  
Chief, Branch 2  
Associate Chief Counsel  
(Financial Institutions & Products)

cc: